

In the High Court of Judicature at Madras

Dated: 10.11.2006

Coram:

The Hon'ble Mr. Justice P.K.MISRA  
and  
The Hon'ble Mr. Justice J.A.K.Sampathkumar

H.C.P.No.903 of 2006

C.Prema.

... Petitioner

Vs.

1. The State of Tamil Nadu,  
rep. by the Secretary,  
Food & Consumer Protection  
Department, Fort St. George,  
Chennai-600 009.

2. The Commissioner of Police,  
Greater Chennai,  
Egmore, Chennai-8.

3. The Secretary to Government,  
Food & Consumer Protection  
Department, Government of  
India, New Delhi.

... Respondents

Habeas Corpus Petition filed under Article 226 of Constitution of India, issue Writ of Habeas Corpus, calling for the records on the file of the second respondent herein in Order No.3/2006 dated 12.8.2006 and set aside the Order of detention and direct the respondents to produce the detainee Christopher, son of Jebamani, before this Hon'ble Court and release him forthwith from custody, who is now confined in Central Prison, Chennai.

For Petitioner .. Mr.G.R.Swaminathan  
For Respondent .. Mr.M.Babu Muthumeeran,  
Nos.1 and 2. Additional Public Prosecutor.

O R D E R

(Order of the Court was made by P.K.MISRA, J)

Heard the learned counsels appearing for the parties.

2. The order of Preventive detention under Section 3(2)(b) read with Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Central Act No.7 of 1980) (hereinafter referred to as 'the Act'), has been challenged by the wife of the detainee.

3. The order of detention has been passed on 12.8.2006. In the grounds of detention, the Detaining Authority has referred to the adverse cases and also the ground case. It has been stated that, on 3.8.2006, the Inspector of Police, Civil Supplies CID, Chennai Unit, received reliable information that rice intended for supply to the poor public under the Public Distribution System, having been smuggled. The Inspector proceeded to the place and kept watch thereon. When the police party went near the rice bags, the detainee came to the spot and informed the Inspector that the rice had been kept by him. When the police rushed to apprehend him, he tried to escape. The police chased him and thereafter the detainee was apprehended after some resistance. 47 bags of rice were seized and subsequently a crime was registered in Civil Supplies CID Chennai Unit Crime No.382/2006 under Sections 6(1) (4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a)(ii) of E.C. Act 1955 and 341, 307, 427, 353, 506(2) and 120(B) IPC and the police continued the investigation. Thereafter, the Detaining Authority has passed an order of Preventive detention on the ground that the detainee has been purchasing ration rice at meagre price, illegally transporting and selling the same at higher price with a view to get more pecuniary gain and as such he is a Black-marketer as contemplated under Section 3(1) of the Act.

4. The order of detention has been challenged on the following grounds:-

(i) at the time of arrest, the arrest memo was furnished to the relative of the detainee. Such arrest memo is stated to have been prepared at the spot on 4.8.2006 at 9.30 A.M. However, the alleged crime was registered at 12.30 P.M. Mysteriously however, the crime number was indicated in the arrest memo. According to the petitioner, this would indicate that there has been non-application of mind on the part of the Detaining Authority inasmuch as either the fact that arrest memo was prepared and served at 9.30 A.M. is incorrect and it has been prepared afterwards.

(ii) The second ground raised by the petitioner is to the effect that in the English version of the grounds of detention it is indicated as if the occurrence had taken place on 3.8.2006, whereas, in the Tamil version of the said grounds of detention, the date of occurrence has been shown to be 5.8.2006. However, it is not disputed that the alleged occurrence took place on 4.8.2006. This, according to the petitioner, prejudiced the detainee in making a proper and effective representation. This also indicates absolute non-application of mind on the part of the Detaining Authority.

(iii) The other ground raised by the petitioner is to the effect that in the English version of grounds of detention it has been indicated as if the offence had been committed under Section 6(1)(4) of TNSC (RDSCS) Order 1982 r/w 7(1)(a)(ii) of E.C. Act 1955 and 341, 307, 427, 353, 506(2) r/w Section 120(B) IPC., whereas, in the Tamil version it has been indicated as if under Section 120(A) IPC.

5. A counter affidavit has been filed on behalf of the second respondent, wherein, it is indicated that even though in the English version and Tamil Version incorrect date of occurrence were given due to typographical errors, the occurrence had actually taken place on 4.8.2006

and the Detaining Authority had passed the order by applying his mind.

6. As regards giving of the crime number in the arrest memo, it is indicated that the Inspector of Police had contacted the police station over cell phone and ascertained the crime number and had put the same in the arrest memo and had served the same. It is submitted even assuming that there has been any violation of the order passed by the Supreme Court in D.K.Basu's case, that violation would not vitiate the subsequent order of detention.

7. Regarding the discrepancy viz., mentioning the offence as 120(B) IPC in the English version and 120(A) IPC in the Tamil version, it is stated that it is a minor discrepancy and it would not vitiate the order of detention.

8. In our considered opinion the discrepancy relating to the date of occurrence, in the English version and the Tamil version of the grounds of detention is a serious matter, which cannot be ignored as a mere minor typographical error. It is not disputed by the Detaining Authority that the alleged occurrence took place on 4.8.2006, whereas in the English version it is indicated as if the occurrence took place on 3.8.2006 and in the Tamil version it is indicated as if the occurrence took place on 5.8.2006. Such a serious discrepancy in the English version and the Tamil version relating to the alleged date of occurrence would cause prejudice to any detainee as he would not be in a position to make any effective representation in relation to the alleged occurrence. The date of occurrence both in the English version and in the Tamil version of grounds of detention is incorrect and the actual date of occurrence is 4.8.2006. Apart from anything else, this discrepancy would cause obvious much prejudice to the detainee in making effective representation and on this ground alone the order of detention is liable to be quashed. Moreover, this also indicates the non application of mind on the part of the detaining authority.

9. Apart from the above, the fact that the crime number was given in the arrest memo which was obviously prepared at the spot at the time of arrest itself creates doubt regarding the arrest memo. Now the Detaining Authority has come forward with an explanation that over cell phone the said crime number was ascertained. However, no other contemporaneous evidence is available to substantiate this subsequent explanation which clearly appears to be an after-thought.

10. The learned counsel appearing for the State placed reliance upon an unreported decision of this Court rendered in H.C.P.No.11 of 2003 dated 14.10.2003. In such matter, the Court had found that there was material on record explaining such discrepancy, hence, the Court came to the conclusion that it could not be said that there was any non application of mind. However, after such decision, there has been several other decisions of this Court, including one reported in P.Susila v. The District Magistrate and District Collector, Karur District, Karur and others (2005 MLJ (CrL.) 49), wherein, it has been held that giving crime number in the arrest memo when the FIR is admittedly registered thereafter itself would indicate, in the absence of contemporaneous explanation, non application of mind on the part of the detaining authority, having the

effect of vitiating the order of detention.

11. We have carefully gone through the affidavit filed by the Detaining Authority and the supporting affidavit filed by the State. It is obvious, this supporting affidavit is only an after thought and it cannot be accepted. Therefore, the order of detention is liable to be quashed on this ground also.

12. The other ground relates to the discrepancy in mentioning the offence as the one u/s 120(B) IPC in the English version and 120(A) IPC in the Tamil version. In the present case, the ground on which the detainee was detained was violation of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 and not on the alleged offence under IPC, which may not have any impact as such. Therefore, we are not accepting such contention of the petitioner.

13. For the aforesaid reasons, the Habeas Corpus Petition is allowed. The order of Preventive detention is hereby set aside and the detainee is ordered to be released forthwith unless his presence is required for any other case.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gr.

- To
1. The Secretary, Government of Tamil Nadu, Food & Consumer Protection Department, Fort St. George, Chennai-600 009.
  2. The Commissioner of Police, Greater Chennai, Egmore, Chennai-8.
  3. The Secretary to Government, Food & Consumer Protection Department, Government of India, New Delhi.
  4. The Superintendent, Central Prison, Chennai.
  5. The Joint Secretary to Government, Public [Law and Order], Fort St. George, Chennai 9.
  6. The Public Prosecutor, High Court, Madras.
- + 2 CCs To Mr. G.R.Swaminathan, Advocate SR NO.54074, 54068

H.C.P.NO.903 OF 2006